

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>No. 4:07CR00405 HEA (DDN)</b>
<b>v.</b>	)	
	)	
<b>ROBERT D. HARTMANN,</b>	)	
	)	
<b>Defendants.</b>	)	

**GOVERNMENT’S RESPONSE TO THE  
DEFENDANT’S PRETRIAL MOTIONS**

COMES NOW the United States of America, by and through its attorneys, Michael W. Reap, Acting United States Attorney for the Eastern District of Missouri, and Howard J. Marcus, Assistant United States Attorney for said District, and responds as follows:

On July 30, 2007, the defendant made an initial discovery request via letter. On August 1, 2007, the Government responded to this request by letter. In doing so, the Government informed the defendant that he could have free access to all Rule 16 discovery. He was directed to call financial analyst Denise Thompson to schedule an appointment to have access to discovery. As of today’s date, the defendant has not done so. The defendant has now filed a series of discovery related motions.

**MOTION FOR PRODUCTION OF BRADY/KYLE MATERIALS  
AND FOR PRODUCTION OF A WITNESS AND EXHIBIT LIST**

The defendant seeks the identity of all victims, individual and corporate, and all witnesses. He further seeks an exhibit list as well as a disclosure of “each and every document as to which the government reasonably anticipates examining said witness or that the government reasonably anticipates the witness will rely upon or to which the government reasonably anticipates that the

witness will refer while testifying during the government's case-in-chief".

The Rule 16 discovery material is available for the defendant's review, however he needs to schedule an appointment to review it. The Government is under no obligation to provide the defendant with a witness or exhibit list at this time. United States v. White, 750 F.2d 726 (8<sup>th</sup> Cir. 1984); see also, United States v. Binns, 2007 WL 12076 (E.D. Mo.) and United States v. Gray, 2006 3524485 (D.Neb.) The Government is also under any obligation to provide any type of early Jencks material. Id.

### **MOTION FOR DISCLOSURE OF EXPERT WITNESSES**

As noted in the Government's letter response, should the Government use an expert, it will make a timely disclosure and comply with Rule 16 and the Federal Rules of Evidence.

### **MOTION TO RETAIN ROUGH NOTES**

Defendants have moved that government investigators be ordered to preserve and disclose any rough notes developed during the investigation. Under present law, the government is not required even to preserve such notes. United States v. Leisure, 844 F.2d 1347, 1360-61 (8<sup>th</sup> Cir.), cert. denied, 109 S. Ct. 324 (1988); United States v. Kuykendall, 633 F.2d 118, 119-20 (8<sup>th</sup> Cir. 1980); cf. Arizona v. Youngblood, 488 U.S. 51, 58 (1988). However, the Eighth Circuit has indicated that the better practice is to preserve rough notes in case a future need for them arises. Leisure, 844 F.2d at 1360-61 n.10. Because the defendant has formally requested that these notes be preserved, the government has now informed the case agents assigned to this matter to preserve any existing notes. Notwithstanding the government's agreement to preserve its agents' rough notes, it opposes any motion to produce those notes. The government is aware of its duty to produce material subject to the rule in Brady v. Maryland and its progeny. The government will also produce any rough notes which were signed or adopted by a witness in the government's case in chief, pursuant to the Jencks Act. United States v. Shyres, 898 F.2d 647,

657 (8th Cir.), cert. denied, 498 U.S. 821 (1990). The government is under no duty to produce agents' rough notes that fall outside these two areas, however. Fed. R. Crim. P. 16(a)(2); Rozch v. United States, 28 F.3d 729 (8th Cir. 1994); United States v. Williams, 962 F.2d 1218, 1224-25 (6th Cir.), cert. denied, 113 S. Ct. 264 (1992); United States v. Pisello, 877 F.2d 762, 767-68 (9th Cir. 1989); United States v. Dekle, 768 F.2d 1257, 1263 (11th Cir. 1985); Kuykendall, 633 F.2d at 119-20; United States v. Burger, 773 F. Supp. 1419, 1425 (D. Kan. 1991).

#### **DEFENDANT'S MOTION FOR PRODUCTION OF IMPEACHING INFORMATION**

The government is aware of its obligations under Brady v. Maryland, 373 U.S. 83 (1963) and will comply therewith. The government agrees to provide the defendant, in advance of trial, a copy of the criminal records, if any, of its witnesses. The government also agrees to provide defendant in advance of trial any promises or agreements between the government and its witnesses, if any.

The government declines to provide any such material with respect to persons who will not be called as witnesses since such a request is beyond the scope of Brady.

With respect to witness statements, including grand jury testimony, these will be produced pursuant to the provisions of the Jencks Act. United States v. Mullins, 22 F.3d 1365, 1372 (6th Cir. 1994); United States v. Eisenberg, 469 F. 2d 156, 160 (8th Cir.), cert. denied, 410 U.S. 992 (1973).

#### **NOTICE OF INTENT TO USE RULE 404(b) EVIDENCE**

The government will, in accordance with Rule 404(b) provide reasonable notice in advance of trial of the general nature of any such evidence it intends to introduce at trial. Rule 404(b) does not require the government to disclose anything more than this, and the government declines to do so.

WHEREFORE, having responded to the defendant's pretrial motions, the government respectfully requests that they be dismissed and denied.

Respectfully Submitted

MICHAEL W. REAP  
Acting United States Attorney

/s/ Howard J. Marcus

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HOWARD J. MARCUS #1698  
Assistant United States Attorney  
111 South 10th Street, Room 20.333  
St. Louis, Missouri 63102  
(314) 539-2200

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2007, the foregoing was filed electronically with the Clerk of the court to be served by operation of the court's electronic filing system upon the following:

BURTON H. SHOSTAK  
Moline and Shostak  
8015 Forsyth Boulevard  
Clayton, Missouri 63105

GRANT J. SHOSTAK  
Moline and Shostak  
8015 Forsyth Boulevard  
St. Louis, Missouri 63105

/s/ Howard J. Marcus

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Assistant United States Attorney

